



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 29 2006

REPLY TO THE ATTENTION OF:
C-14J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mark Dym
Hughes Socol Piers Resnick & Dym Ltd.
Three First National Plaza
70 West Madison Street
Chicago, Illinois 60602

RE: FONA International, Incorporated
U.S. EPA Identification Number: ILD 046 579 827
Consent Agreement and Final Order
Docket Number CAA-05-2006-0039 RCRA-05-2006-0025 MM-05-2006-0014

Dear Mr. Dym:

Enclosed please find one of two original signed copies of a fully executed Consent Agreement and Final Order (CAFO) in resolution of the referenced case. We filed the originals with the Regional Hearing Clerk on SEP 29 2006.

Please pay the civil penalty of \$70,000 in accordance with paragraph 47 of this CAFO. Please provide your payment in two checks: one in the amount of \$61,090 and one in the amount of \$8,910. Please reference the \$61,090 check with the number BD 2750603A015 and Docket Number CAA-05-2006-0039. Please reference the \$8,910 check with the number BD 2750642R012 and Docket Number RCRA-05-2006-0025. Also, enclosed is a *Notice of Securities and Exchange Commission Registrant's Duty to Disclose Environmental Legal Proceedings*.

Thank you again for your cooperation in resolving this matter.

Sincerely,

Debra A. Kasman for

Cathleen R. Martwick

Enclosure

cc: Todd Marvel, Illinois EPA (with CAFO)

bcc: Donald Law
Diane Sharrow

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5 **RCRA-05-2006-0025**

IN THE MATTER OF:

FONA International, Incorporated
1900 Averill Road
Geneva, Illinois 60134
EPA ID No.: ILD046579827

Respondent.

) Docket No. CAA-05-2006-0039
)
) **MM-05-2006-0014**
) Proceeding to Assess a Civil Penalty under
) Section 3008(a) of the Resource Conservation
) and Recovery Act of 1976, as amended
) 42 U.S.C. § 6928(a) and
) Proceeding to Assess a Civil Penalty under
) Section 113(d) of the Clean Air Act, 42 U.S.C.
) § 7413(d)
)

Consent Agreement and Final Order

The United States Environmental Protection Agency (U.S. EPA) and FONA International, Incorporated (FONA) have agreed to a settlement of this action before filing of a complaint and, thus, this action is simultaneously commenced and concluded pursuant to Sections 22.1(a)(2) and (4), 22.13(b), and 22.18(b) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits* (Consolidated Rules) by the filing of this Consent Agreement and Final Order (CAFO). 40 CFR §§ 22.1(a)(4), 22.13(b), 22.18(b).

I. Preliminary Statement and Jurisdiction

1. This civil administrative action is instituted under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. § 6928(a) and Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d).

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2. Complainant is, by lawful delegation, the Chief, Enforcement and Compliance Assurance Branch, Waste, Pesticides and Toxics Division, and the Director of the Air and Radiation Division, Region 5, United States Environmental Protection Agency.
3. Respondent is FONIA International Incorporated, a corporation doing business in Illinois.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a CAFO. 40 C.F.R. § 22.13(b) (2004).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.
7. Jurisdiction for this action is conferred upon U.S. EPA by Sections 2002(a)(1), 3006(b), and 3008 of RCRA, 42 U.S.C. §§ 6912(a)(1), 6926(b), and 6928, and Section 113 of the CAA, 42 U.S.C. § 7413.

II. Statutory and Regulatory Background

A. RCRA

8. U.S. EPA has promulgated regulations, codified at 40 CFR Parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store and dispose of hazardous waste.
9. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of the U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42

U.S.C. §§ 6921-6939e) or of any state provision authorized pursuant to Section 3006 of RCRA, constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

10. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Illinois final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective January 31, 1986. 51 Fed. Reg. 3778 (January 31, 1986). The Administrator of U.S. EPA granted Illinois final authorization to administer certain requirements of Hazardous and Solid Waste Amendments (HSWA) and certain additional RCRA requirements, effective on the following dates: March 5, 1988, 53 Fed. Reg. 126 (January 5, 1988); April 30, 1990, 55 Fed. Reg. 7320 (March 1, 1990); June 3, 1991, 56 Fed. Reg. 13595 (April 3, 1991); August 15, 1994, 59 Fed. Reg. 30525 (June 14, 1994); May 14, 1996, 61 Fed. Reg. 10684 (March 15, 1996); and October 4, 1996, 61 Fed. Reg. 40520 (August 5, 1996). The U.S. EPA-authorized Illinois regulations are codified at 35 Illinois Administrative Code (IAC) Part 703 *et seq.* See also 40 C.F.R. § 272.700 *et seq.*

11. As required, U.S. EPA provided notice of commencement of this action to the State of Illinois pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

12. Under 40 C.F.R. § 260.10, a generator means any person, by site, whose act or process produces hazardous waste identified or listed or whose act first causes a waste to become subject to regulation.

13. 35 IAC § 722.140(a) [40 C.F.R. § 262.40(a)] or 35 IAC § 722.142(b) [40 C.F.R. § 262.42(b)] requires each generator to keep a copy of each manifest signed by the designated facility for at least three years from the date the waste was accepted by the initial transporter.

B. CAA

14. On May 31, 1972, U.S. EPA approved the Illinois Pollution Control Board (IPCB) Rule 103 as part of the federally enforceable state implementation plan (SIP) for Illinois. 37 Fed. Reg. 10862, May 31, 1972.

15. IPCB Rule 103(a)(1) states that no person shall cause or allow the construction of any new emission source or any new air pollution control equipment, or cause or allow the modification of any existing emission source of air pollution control equipment, without first obtaining a construction permit from the Agency. Due to renumbering of the IPCB Rules, Rule 103 (a)(1), as approved by U.S. EPA, is currently set forth at IAC, § 201.142.

16. IPCB Rule 103(b)(1) states that no person shall cause or allow the operation of any new emission source or new air pollution control equipment, for which a construction permit is required, without first obtaining an operating permit from the Agency. Due to renumbering of the IPCB Rules, Rule 103 (b)(1), as approved by U.S. EPA, is currently set forth at IAC, § 201.143.

17. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

18. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

III. Factual Allegations - General

19. Respondent owns and operates a food flavoring manufacturing facility at which it

produces flavoring for the food and beverage industry. Respondent's facility is located at 525 Randy Road in Carol Stream, Illinois (the Facility).

20. The Facility began operating in 1994.

A. RCRA

21. Respondent is a "person" as defined by Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), 35 IAC § 720.110 and 40 C.F.R. § 260.10.

22. On or about October 2, 2001, Respondent notified U.S. EPA that it generates hazardous waste greater than 100 kilograms per month..

23. As a generator of greater than 100 kilograms per month of hazardous waste, Respondent is subject to the recordkeeping and reporting requirements for generators of hazardous waste at 35 IAC § 722.140(a) [40 C.F.R. § 262.40(a)]. 35 IAC §§ 722.110 and 722.144 [40 C.F.R. §§ 262.10 and 262.44].

24. At all times relevant to this CAFO, Respondent generated "solid waste" at the Facility as defined by 35 IAC § 721.102 and 40 C.F.R. § 261.2.

25. At all times relevant to this CAFO, Respondent generated "hazardous waste" at the Facility as defined by 35 IAC § 721.103 and 40 C.F.R. § 261.3.

26. Respondent's Facility consists of contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.

27. Respondent is the "owner" and "operator" of a "facility" as those terms are defined by 35 IAC § 720.110 and 40 C.F.R. § 260.10. Respondent's facility has been assigned U.S. EPA Identification Number ILD046579827.

28. On September 19, 2005, U.S. EPA conducted an inspection at the Facility to determine compliance with Illinois and federal hazardous waste regulations.
29. During the inspection on September 19, 2005, a U.S. EPA inspector observed that Respondent failed to retain a copy of each manifest signed in accordance with 35 IAC § 722.123(a) [40 C.F.R. § 262.23(a)] for at least three years from the date the waste was accepted by the initial transporter. 35 IAC § 722.140(a) [40 C.F.R. § 262.40(a)].
30. On November 22, 2005, U.S. EPA issued a request for information under Section 3007 of RCRA, 42 U.S.C. § 6927, to Respondent. U.S. EPA requested, among other things, copies of all hazardous waste manifests prepared by Respondent for its Facility for calendar years 2001 through 2005. In a December 30, 2005, response, Respondent failed to provide copies of manifests signed in accordance with 35 IAC § 722.123(a) [40 C.F.R. § 262.23(a)] for hazardous waste shipped on January 27, 2003, July 1, 2003, August 20, 2003 and one other (illegible) unknown date in 2003.
31. On February 8, 2006, U.S. EPA issued a Notice of Violation to Respondent.

B. Air

32. The Facility operates a dry and liquid mixing area that includes four liquid tanks equipped with mixers and aerators, one reaction vessel, and one dry blending operation.
33. The Facility operates spray drying areas that include four spray dryers equipped with wet scrubbers.
34. The Facility is a new "emission source" as that term is defined at IAC Part 201.102.
35. As a "new emission source," FONA is subject to the construction and operating permit requirements of IAC Part 201.142 and 201.143.
36. On September 22, 2005, U.S. EPA issued a Notice of Violation to Respondent.

IV. Alleged Violations

A. RCRA

37. Respondent failed to keep a copy of each manifest signed by the designated facility for at least three years from the date the waste was accepted by the initial transporter, or failed to submit a legible copy of four manifests to the State with some indication that the generator has not received confirmation of delivery or the signature of the owner or operator of the designated facility, within 60 days of the date the waste was accepted by the initial transporter in violation of 35 IAC § 722.140(a) [40 C.F.R. § 262.40(a)] or 35 IAC § 722.142(b) [40 C.F.R. § 262.42(b)].

B. CAA

38. Respondent failed to obtain construction and operating permits, in violation of IPCB Rules 103(a)(1) and 103(b)(1) (now known as the IAC Part 201.142 and 201.143) and Section 110 of the CAA, 42 U.S.C. § 7410.

V. Terms of Settlement

39. Complainant and Respondent agree that the settlement of this matter pursuant to Section 22.13(b) of the Consolidated Rules, 40 CFR § 22.13(b), without the filing of a complaint or the adjudication of any issue of fact or law is in their interests and in the public interest.

40. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

41. Respondent consents to the issuance of this CAFO and the assessment of the civil penalty as outlined in Section VI of this CAFO.

42. Respondent has demonstrated and certifies that it came into compliance with the requirements that formed the basis of the allegations in Section IV of this CAFO.

43. Within 30 days of the effective date of this CAFO, the Respondent shall provide to the U.S. EPA copies of the following manifests with the signature of the designated facility which received the waste, or a letter explaining why a copy of the manifest with the signature of the facility could not be obtained: Manifest Numbers IL40486951, IL10699300, IL10764367, and IL8829731.

44. Respondent consents to the issuance of this CAFO and payment of a civil penalty, as set forth below in this CAFO.

VI. Civil Penalty

45. The Administrator of U.S. EPA may assess a civil penalty of up to \$25,000 per day for each violation of Subtitle C of RCRA according to Section 3008 of RCRA, 42 U.S.C. § 6928, and for each violation of the CAA, under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19 (2004). The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, required U.S. EPA to adjust its penalties for inflation on a periodic basis. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, published at 40 C.F.R. Part 19, U.S. EPA may assess a civil penalty of up to \$27,500 per day for each violation that occurred from January 31, 1997 through March 15, 2004 and \$32,500 per day for each violation that occurred after March 15, 2004.

46. Based on an analysis of the applicable statutory penalty factors in 3008 of RCRA and 113(e) of the CAA, the facts and circumstances of this case, the steps Respondent has taken to achieve and maintain compliance, Respondent's good faith efforts to comply, and other relevant factors, U.S. EPA has determined that an appropriate civil penalty to settle the violations alleged

in Section IV of this CAFO is \$70,000 and Respondent has agreed to pay a civil penalty in that amount.

47. Respondent must pay the \$70,000 civil penalty either by cashier's or certified check payable to the "Treasurer, United States of America," or by Electronic Funds Transfer (EFT) within 30 days after the effective date of this CAFO.

48. Respondent must send the check to:

U.S. EPA - Region 5
P. O. Box 371531
Pittsburgh, PA 15251-7531

or remit funds by EFT to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message is: "D 68010727 Environmental
Protection Agency."

49. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Regional Hearing Clerk
U.S. EPA Region 5
77 West Jackson Boulevard (E-13J)
Chicago, Illinois 60604-3511

Cathleen R. Martwick
Associate Regional Counsel
Office of Regional Counsel
U.S. EPA Region 5
77 West Jackson Boulevard (C-14J)
Chicago, Illinois 60604-3511

Diane Sharrow
Environmental Scientist
Enforcement and Compliance Assurance Branch (RCRA)
Waste, Pesticides and Toxics Division
U.S. EPA Region 5
77 West Jackson Boulevard (DE-9J)
Chicago, Illinois 60604-3511

Attn: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
U.S. Environmental Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

50. This civil penalty is not deductible for federal tax purposes.
51. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.
52. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a six percent per year penalty for failure to pay any part of a debt more than 90 days past due.

VII. General Provisions

53. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in Section IV of this CAFO.
54. Respondent waives its right to request a hearing as provided at 40 CFR § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

55. If Respondent fails to comply with any provision contained in this CAFO, Respondent waives any rights it may possess in law or equity to challenge the authority of U.S. EPA to bring a civil action in the appropriate United States District Court to compel compliance with this CAFO.

56. This CAFO does not affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

57. This CAFO does not affect Respondent's responsibility to comply with RCRA, CAA and other applicable federal, state and local laws, and regulations. Except as provided in paragraph 53 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by Complainant.

58. This CAFO is a "final order" for purposes of U.S. EPA's RCRA Civil Penalty Policy.

59. This CAFO constitutes an "enforcement response" as that term is used in "U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

60. The terms of this CAFO bind Respondent and its successors, and assigns.

61. Each person signing this CAFO certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

62. Each party agrees to bear its own costs and fees, including attorneys' fees, in this action.

63. This CAFO constitutes the entire agreement between the parties.

IN THE MATTER OF:

FONA International, Incorporated
1900 Averill Road
Geneva, Illinois 60134

Docket Number:

Agreed to on this 28th day of September, 2006.



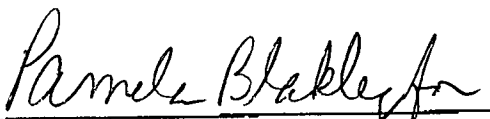
FONA International, Incorporated
1900 Averill Road
Geneva, Illinois 60134

Agreed to on this 28th day of September, 2006.



Joseph M. Boyle, Chief
Enforcement and Compliance Assurance Branch
Waste, Pesticides and Toxics Division
U.S. Environmental Protection Agency, Region 5

Agreed to on this 28th day of September, 2006.



Cheryl Newton, Acting Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

IN THE MATTER OF:

FONA International, Incorporated
1900 Averill Road
Geneva, Illinois 60134

Docket Number:**FINAL ORDER**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order disposes of this proceeding pursuant to 40 C.F.R. § 22.18. IT IS SO ORDERED.

Ordered on this 29th day of September, 2006

By: 

Margaret M. Guerriero, Director
Waste, Pesticides and Toxics Division
U.S. Environmental Protection Agency, Region 5

By: 

Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection Agency, Region 5

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CERTIFICATE OF SERVICE

I, Shanee Rucker, certify that I hand delivered the original
of the Consent Agreement and Final Order, docket number **CAA-05-2006-0039**
CRA-05-2006-0025

MM-05-2006-0014 to the Regional Hearing Clerk, Region 5,
United States Environmental Protection Agency, and that I mailed
a correct copy by first-class, postage prepaid, certified mail,
return receipt requested, to FONIA International, Inc. by placing
it in the custody of the United States Postal Service addressed
as follows:

Mark Dym
Hughes Socol Piers Resnick & Dym ltd.
Three First National Plaza
70 West Madison Street
Chicago, IL 60602

on this 29th day of September, 2006

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Shanee Rucker

AECAS (MI/WI)

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